THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.27219 OF 2005

DATED: 31ST January, 2006.

Between:

K. Venkateswarlu … Petitioner

And

1. The District Collector, Kurnool

   District, Kurnool and others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.27219 OF 2005

ORDER :

This writ petition is filed seeking a declaration that the order of the 1st respondent – District Collector, Kurnool, dated 15-10-2005 in rejecting the appeal preferred by the petitioner as arbitrary and illegal.

In pursuance of the Notification, dated 30-5-2004 issued by the 2nd respondent - Revenue Divisional Officer, Adoni, Kurnool district inviting applications from the eligible candidates for filling up the vacancy of the fair price shop dealer of Molagavalli village, Aluru Mandal, Kurnool district, it appears that the petitioner submitted his application. However, by proceedings of the 2nd respondent – Revenue Divisional Officer, dated 14-3-2005, one K. Mahesh was appointed as the dealer. Aggrieved by the same, the petitioner preferred an appeal before the Joint Collector, Kurnool along with a petition to condone the delay of 129 days in preferring the appeal. The said appeal was dismissed by order dated 15-10-2005 which runs as under :

> *"In terms of the Commissioner of Civil Supplies Cir.No.PDSII(4)/821/91, dt: 2-7-1991 (read with, Supreme Court as held in AIR 1969 SC 1335 and SIR 1970 SC 209) the appeal filed by Sri K. Venkateswarlu, F.P. Shop Dealer, Molagavalli (V), Alur (M), Kunrool (Dt.) is dismissed at the admission stage informing that the authority mentioned is not vested the powers to condone the delay in the matter."*

This writ petition is filed questioning the said order dated 15-10-2005 contending inter alia that the ground on which the appeal was dismissed is contrary to the settled principles of law.

Heard both sides and perused the material on record.

The question whether Section 5 of the Limitation Act, 1963 is applicable to the appeals filed under the Control Orders promulgamated under Section 3 of the Essential Commodities Act, 1955 has been considered by a Division Bench of this

Court in detail in MAHENDRA KUMAR GOYAL vs. ADDL. COMMISSIONER OF CIVIL SUPPLIES. Having considered all the aspects in detail and following the ratio laid down by the Supreme Court in MUKRI GOPALAN vs. C.P. ABOOBACKER the Division Bench held that Section 5 of the Limitation Act, 1963 is applicable to the appeals filed under Section 6-C of the Essential Commodities Act, 1955 and also to the appeals provided under the orders promulgamated under Section 3 of the Essential Commodities Act, 1955.

In the light of the principle of law as laid down in the above decisions, the impugned order dated 15-10-2005 in having dismissed the appeal of the petitioner on the ground that the appellate authority was not vested with the powers to condone the delay is erroneous and liable to be set aside.

Accordingly, the impugned order dated 15-10-2005 is set aside and the Writ Petition is disposed of with a direction to the Appellate Authority to consider the application filed by the petitioner to condone the delay in preferring the appeal on merits and pass appropriate orders in accordance with law. No costs.

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G. ROHINI, J.

Dt. 31-1-2006.

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